

### Remarks

In view of the amendments and remarks presented herein, favorable reconsideration and allowance are respectfully requested. Claims 1, 3-13, 25, 36, 47, 53, and 67-69 have been hereby amended and claim 2 has been cancelled. Claims 1 and 3-70 are pending for examination.

Claims 1-6, 8-10, 13-21, 23, 25, 26-30, 33-45, 47-56, 58-60, 62-63 and 65-70 stand rejected under 35 U.S.C. §102(b) as being anticipated by Kawata et al. (U.S. App. Pub. 2002/0032777). Applicant submits that Kawata does not teach or suggest all elements of the independent claims.

For example, claim 1 recites, *inter alia*, "wherein the one or more load balancing routines encode the collected server capability information to represent the plurality of servers in accordance with proportional server capability of each of the plurality of servers." Independent claims 14 and 60 contain similar recitations. Claim 26 recites, *inter alia*, "a proportional server capability information encoding that reflects proportional capabilities of the plurality of servers." Independent claims 53 and 67 contain similar recitations.

According to the Office Action, "Kawata et al shows a load balancer that generates capability information based on the measured load of the servers (paragraphs 75 and 76)." Whether or not this is true, Kawata fails to teach or suggest that there is any measurement or recordation of proportional server capability. That is, the capability of one server with respect to the whole. Put another way, there is no test across a plurality of servers that, for example, shows how much of a test load each server handles over an interval (as disclosed in the specification paragraph [1039]. There is no teaching or suggestion in Kawata that shows that a plurality of servers are tested with a load, and that proportional work results are obtained. Rather, each server appears to be tested individually [0074].

Further, there is nothing in Kawata to teach or suggest that the individual results are compared proportionally. Additionally, even if such a comparison were made, there is nothing in Kawata that teaches or suggests that such a comparison of results would be the equivalent of testing a plurality of servers with sample requests over an interval to provide a proportional comparison.

For at least these reasons, Applicant submits that claims 1, 14, 26, 53, 60 and 67 are allowable over the prior art of record. Claims 3-6, 8-10, 13, 15-21, 23, 25, 27-30, 33-45, 47-52,

54-56, 58-59, 62-63, 65-66, and 68-70 should be allowable over the prior art of record, based at least on their dependency from allowable independent claims.

Claims 7, 22, 31, 32 and 64 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kawata in view of Leighton et al. (U.S. App. Pub. 2002/0129134). According to the Office Action, Leighton teaches sending test requests to all the servers connected (paragraph 36). Even if this is the case, there is nothing in the combination that teaches or suggests "wherein the one or more load balancing routines encode the collected server capability information to represent the plurality of servers in accordance with proportional server capability of each of the plurality of servers" or "a proportional server capability information encoding that reflects proportional capabilities of the plurality of servers." Much like Kawata, Leighton simply discloses learning information about individual machines. Specifically, Leighton notes that the system thereof "check[s] for error and download times." [0036]. Again, as with Kawata, there is no teaching or suggestion of a proportional comparison.

For at least these reasons, claims 7, 22, 31, 32 and 64 should be allowable over the prior art of record, based at least on their dependency on allowable independent claims.

Claims 11 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kawata in view of Coughlin (U.S. App. Pub. 2004/0024861). Coughlin, however, does not cure the deficiencies of Kawata with respect to independent claim 1. Claims 11 and 12 should be allowable based at least on their dependency from allowable independent claim 1.

Claim 24 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kawata in view of Pruitt et al. (U.S. Pat. 7,308,475). Pruitt, however, does not cure the deficiencies of Kawata with respect to independent claim 14. Claim 24 should be allowable based at least on its dependency from allowable independent claim 14.

Claims 46, 57 and 61 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kawata in view of Shabtay et al. (U.S. App. Pub. 2002/0120743). Shabtay, however, does not cure the deficiencies of Kawata with respect to independent claims 37, 53 and 60. Claims 46, 57 and 61 should be allowable based at least on their dependency from allowable independent claims.

For at least the reasons presented herein, Applicant submits that all claims are allowable over the prior art of record. Accordingly, favorable reconsideration and allowance are

respectfully requested. If the Examiner has any questions, the Examiner is invited to contact the undersigned at the number provided below.

Respectfully submitted,  
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